

DATE: October 2, 2003

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee

FROM: Phil Fauble & Tom Portle

SUBJECT: Minutes of September 11, 2003 Nonmetallic Mining Advisory Committee Meeting

Following is a report on the main points from the meeting of the NR 135 Nonmetallic Mining Advisory Committee ["NMAC"], held on September 11, 2003 from 10-4 at the Wisconsin Highway Patrol District One Headquarters Building in DeForest, WI.

NMAC members present: Bruce Brown, Sue Courter, Mike Erickson, Ron Garrison, Marty Lehman, Ed Reesman, Bryce Richardson (first meeting - in response to NMAC motion requesting WALCE participation), Matt Stohr (new member replacing Jennifer Sundstrom) & Gary Werner

Sitting in for NMAC member: Justin Cavey (substituting for Jim Burgener)

NMAC members not present: Jim Burgener

WDNR Staff Present: Jessica Maloney, Rhonda Kenyon, Dave Kunelius, Phil Fauble, Dave Misterek, Larry Lynch, Barb Palecek and Tom Portle

Others Present: Clint Weninger, Payne & Dolan; Eric Fowle, East Central WI Regional Planning Commission; Don Franke, La Crosse County, Pat Osborne, Aggregate Producers of Wisconsin, Jen Schuetz, Kramer Co., Pat Stevens Wisconsin Transportation Builders Association; Pam Andros, Dane County; and Mindy Manegold, Fond Du Lac County.

Main points of discussion, motions and any decisions or necessary "follow-up activities" are presented below:

(Agenda items in ► **bold**)

► **Welcome & Introduction:** **Tom Portle** introduced new members, gave background on the NMAC purpose and charge, reviewed the meeting ground rules. This was followed by a short "go-around" which is captured in the following discussion on the fee report.

► **"Draft Report on the Reasonableness of Fees"**

Tom Portle passed out a draft copy of the "Report on the Department Evaluation of the Reasonableness of Fees" (Fee Report) and a copy of a revised Table 1. Tom provided some background regarding the rule requirement for the preparation of this report, the

audit review process and the audit results. Input was then solicited from the members of the committee and members of the public if a committee member requested their input.

Mike Erickson - Asked Tom whether or not the DNR will review the fees after the RA's are done reviewing the reclamation plans? Mike also cites the example of an operator in Ozaukee County that has been charged far more than the amount indicated in the audit.

Response - Tom responds that this report is a work in progress and that the Department will continue to audit RAs as needed. However, the Department cannot commit to conducting 20 or more audits every year, as was done for this effort. **Phil Fauble** responded to Mike's question about the Ozaukee County example by explaining that most operators in that county are also required to post bonds and pay fees as a condition of their conditional use permits (zoning), which could be why they pay higher fees. Phil offered to contact the County to resolve any issues, if necessary.

Gary Werner - Gary was concerned that the fees forwarded to the DNR to support the DNR program were not actually covering DNR costs. Gary called on representatives of Dane and La Crosse Counties to comment on their experiences regarding their expenditures and fees. **Pam Andros** of Dane County indicated that their fees do not cover all their expenses and probably never could fully recover such costs. **Don Franke** of La Crosse County comments that it is unfair for the Department to focus solely on fees and that they should focus on more on what services are provided by the RAs for the fees. He maintained that the focus ought to be more on the reclamation standards being applied on the ground. Don stated that there are no new staff and so the time and energy to implement this program come out of other existing programs which, as a result, have suffered. He also indicated his perception that the county had done a very thorough and honest estimate of the cost of program implementation only to be, in effect, "penalized" for its handling of the program.

Response - Larry cautioned everyone that the audit report needs to be kept in context; it is a snapshot in time over a timeframe that was imposed by code. While it cannot provide a complete picture it does convey a sense as to whether or not fees and expenditures appear reasonable at this time.

Ron Garrison - Ron expressed a concern that a simple justification that the money collected for reclamation fees was spent administering the reclamation program (accounts balance) did not really get at the issue of "reasonableness". Ron felt that RAs could always find ways to spend it. He was also concerned that those counties currently charging "lower" fees would look at the counties charging "higher" fees and perhaps elect to raise their fees.

Ed Reesman - Ed expressed his concern that some of these fees are being used by the RAs to reimburse expenses associated with mine operations issues (more appropriate to cover under zoning - conditional use permit costs), not reclamation fees.

Response - **Justin Cavey** responded that most times it is difficult to separate these two issues and that, as public entities, the county staff are obligated to respond to public questions and

concerns. **Bruce Brown** agreed that the costs should be separated, if possible. Tom reiterates that this report does not contain enough detail to adequately address this issue. To provide some additional information, Tom asks the Department staff who conducted audits for some input regarding the county programs they audited. **Philip Fauble** and **Dave Misterek** both agreed that the counties are doing a very good job administering the program given their constraints (no additional staff) and the short time frame for implementing the program. **Larry Lynch** provides the Board members with a summary of the process used to submit a report to the Natural Resources Board. Please refer to Motion (after lunch) which captures the NMAC Position on "Draft Report on the Reasonableness of Fees".

► **Update on the Comprehensive Planning Legislation (Smart Growth/Registration) Workgroup**

Tom Portle gave the NMAC some background information concerning the make-up and purpose of the workgroup. The group was formed in response to a NMAC motion at a previous meeting. The motion directed the DNR to explore ways the Smart Growth/Comprehensive Planning process could be integrated with the Marketable Nonmetallic Mineral Registration provisions in NR 135.53 - 64. The mission statement developed during the first workgroup meeting is included for background.

Mission Statement:

"Identify and initiate appropriate actions intended to facilitate the planning for wise use of nonmetallic mineral deposits. In this way we may: act to ensure their availability for future generations, reduce land use conflicts, and provide relevant information to all parties who may have opportunities to use this to information in the context of Comprehensive Planning. Develop ways to improve the availability of information, such as that obtained through the registration of nonmetallic mineral deposits, to all potential users. Improve the connections between and increase the knowledge of an ease of access to and the use any and all existing and future data bases, information sources regarding nonmetallic mineral deposits."

Eric Fowle presented a summary of the Smart Growth legislation and how this land use planning process affects non-metallic mining in Wisconsin. Eric's feeling is that most of this planning is regional in nature and that all parties need better guidance. There is technical committee currently working on the Geologic Resources portion of the Natural Resources Element of the Regional Comprehensive Plan. Their ultimate goal is to come up with a planning model that counties can use to consider planning for future mineral resource needs, not just existing operations. Bruce Brown added perspective on the value of setting aside nonmetallic mineral resources for the future on a state-wide basis and how the involvement of the workgroup (created by NMAC motion) could be support this objective.

► **Lunch - 12:30 - 1:15**

After lunch:

► **Motions on NMAC Position on "Draft Report on the Reasonableness of Fees"**

Tom had drafted some language that captured the NMAC's position regarding the Fees Report and presented it as a proposed motion to be acted on by the NMAC. The proposed motion read as follows: *The NMAC is in basic agreement with this report as prepared for the Natural Resource Board. Further, because insufficient data are available and not enough time has elapsed the NMAC move that it revisit this matter at a future meeting. The Department should report back to the NMAC on the question of reasonableness of fees and the balance between program revenue and expenditures during or before October 2005 based on more complete information. At that time data from sources, including but not limited to, regular program audits, annual reports, surveys of fees charged by RA's will be used to provide a more complete report on both the reasonableness of fees and revenue and expenditure balance.*

A motion to accept the proposed language drafted by Tom was made by **Gary Werner** and seconded by **Matt Stohr**. The floor was then opened for further discussion of the motion.

Discussion:

Several members suggested that further language be added to the statement. The main discussion as to addition language had to do with concerns that the line between operations and reclamation was becoming blurred. The concern is that this, in turn, can result in costs of addressing zoning and operations type issues being allocated by reclamation fees. **Justin Cavey** noted that often the differences in costs between RAs were likely due to differences in the services provided. More specifically, he emphasized the difficulty, as a practical matter, in keeping a bright line between operations/ zoning and reclamation. Justin illustrated this difficulty by describing the typical call from a concerned citizen and how much time it can take to understand their issue and, if appropriate, to educate them that their concern may be a zoning or operations issue (conditional use) rather than a reclamation issue. Should this be reflected in the statement to the NRB? - (should some action on this matter ought to be taken?) - there was no consensus on this issue. We did, however, agree to discuss this further at the next NMAC meeting.

Gary Werner and other members also voiced concerns that the Natural Resources Board may not get the NMAC's message as to the limitations of the report. There needed to be language designed to explain results expressed numerically (subject to quick and incomplete conclusions) were sufficiently and clearly explained by the text of the report. This way the reader would be more likely to come away with a balanced understanding both of the study results and their limitations. **Larry Lynch** addressed these concerns by suggesting that the concerns expressed by then NMAC should be included in both the green sheet and the background memo that accompanies the report.

Motion to accept the proposed language was approved by voice vote (9-in favor, 0-opposed).

► Input from partners and public

Mindy Mangold, Fond du Lac County - Mindy inquired about the status of proposed Assembly Bill 411 and Senate Bill 198 and whether or not the NMAC had taken any position on the bills. The bills would establish an exemption from the NR 135 rules for excavations up to 3 acres in size that are reclaimed as wetlands. The counties were firmly opposed to this bill and Mindy provided a copy of a letter sent by Fond du Lac County to the Legislative Committee Chairmen. **Matt Stohr** provided some further explanation of the issue and the circumstances that prompted creation of the bill.

Motion:

- There was considerable discussion of the possible actions the NMAC could take in regards to the proposed bills. **Mike Erickson** summarized his understanding as to the impetus behind the proposed legislation. Ultimately, there was general agreement that any changes in the non-metallic reclamation law should originate with the NMAC.

Gary Werner made a motion that the NMAC go on record as being opposed to this proposed legislation (AB 411 and SB 198). These bills create a new exemption applicable to wetlands created by excavations for ponds and shallow “scrapes”/ “soil scrapes”. **Matt Stohr** seconded the motion.

After further discussion, Gary then made a second motion to direct the DNR to prepare a statement for the legislature requesting the NMAC's involvement in the bill writing process. Matt also seconds this motion. More discussion ensues.

The first motion fails on a tie vote by a voice vote (4-in favor, 4-opposed and 1-abstention).

Gary withdraws the second motion.

Ed Reesman makes a motion that the NMAC send a letter to the Legislative committees indicating that the NMAC has reviewed the legislation and have determined that the statutory change to address this issue is unnecessary since existing statutory and code language adequately address this issue. Therefore, the expanded exemption proposed in this legislation is not needed. Gary seconds the motion.

The motion is passed on a show of hands (7-in favor, 0-opposed and 2-abstentions)

► Feedback

Sue Courter - Congratulated the DNR staff on their efforts.

Gary Werner - The NMAC continues in its tradition of being solution based.

► Next Meeting

- The NMAC decided to meet again in January 2004. Most requested a date late in the month.
- All agreed that the next meeting should again be held in DeForest, WI.

Partial List of Agenda Items for August Meeting:

- Report from the Registration Workgroup.
- What practical actions that can be taken to reinforce the distinction between operations and reclamation? (This stems from the discussion on fees being used to support non-reclamation activities and the feeling by some that fees ought not support work that is related to a conditional use permit).
- A representative of the County Land Conservation Departments - Bryce Richardson - participated in this meeting as a result of an NMAC motion and will participate in future meetings, but his voting status needs to be determined at the next NMAC meeting.